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April 2022

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New Lending Requirements For Condominiums

By David Brock, PCAM

It hasn't quite been a year since we all watched in horror as the Champlain Towers South collapsed and we learned that 98 lives and 136 homes were lost. There were no survivors. In the days that followed, several nearby condo buildings were evacuated due to concerns over significant deferred maintenance. The collapse



of the building in Surfside, FL has brought on much discussion about the issues involved in aging condominium buildings across the country.

We are now seeing the results of this national conversation as lenders are now being required to ask more questions during the process of arranging financing for prospective buyers. Beginning earlier this year, lenders have been given guidance by Fannie Mae and Freddie Mac, which are government sponsored entities that purchase mortgage loans from smaller banks and mortgage companies. The mortgages are bundled and sold as mortgage-backed securities to investors, providing the necessary liquidity in the mortgage markets to make

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How To Be A HAPPY & PRODUCTIVE VOLUNTEER Board Member!

OR How To Survive Board Service And STILL HAVE A LIFE!

Volunteer Appreciation week occurs in mid-April. This is a special week which began in 1974 to recognize the impact of volunteer service and the power of volunteers to tackle society's greatest challenges -- to build stronger communities and be a force that transforms the world. In 2022, April 17th is the start of this special week of recognition.

I have said it before and cannot say it enough -- HOA Board member volunteers are among the greatest volunteers. Unlike volunteers in other organizations, they have a unique challenge. Any other volunteer, whether for a hospital, museum or other non-profit organization can leave and go home. HOA board members usually live in the community in which they serve. This situation may cause Board members to feel like they are serving 24-7.

Rather than finding the role of Board member to be a "thankless job", it is possible to have a different perspective. Your community has benefited from your service, and it doesn't hurt to find ways to call attention to it.

HOA Board members may serve because they perceive that no one else will do so. This may not be the best motivation to serve. The lack of other willing volunteers also has an effect on a Board member serving "forever". The truth is they do get tired and burnout. Fatigue and burn out are not the best places to be when making important decisions for the community.

So how do Board members serve so that the negative aspects don't become issues?

1. **Setting up Boundaries** is a great place to begin. Understanding your role and position in the association is important. It is easy to view your role as the "building manager" or "super". Sometimes people wonder why no one wants to serve on the Board, and the *perception* of the job may play a role. Unless there is an "emergency" in the building, and assuming you have vendors who are responsive, then your role as a Board member, between meetings, should not be very visible. Some owners, who know where you live, may need to be informed that you are a "volunteer" and not the *building manager*.
2. **Implementing Delegation** will help relieve the Board of some duties. Delegate to your vendors, and form *ad hoc committees* related to specific areas of interest to owners. Delegation does require the Board to be very clear in its direction so that repeated follow-up for clarification is not necessary. Some people have difficulty delegating as there is a sense that no one can do it better. Involving owners, in small and easy ways, is a great way to recruit future board members. A gradual turnover of Board members is much better than a complete turnover, or a Board that never changes.
3. **Don't Micromanage.** Avoid doing the work of professionals on your team. Board members, who themselves

"How To Be A HAPPY & PRODUCTIVE VOLUNTEER...": continued on page 2.



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"How To Be A HAPPY & PRODUCTIVE
VOLUNTEER...": continued from page 1.

are professionals such as attorneys, CPA's, engineers, or property managers, may be tempted to wear their "professional hat" and tell the association's professionals how to do their job. We call this *micromanagement*, and it does not benefit anyone. It makes more work for the Board member, and it damages the relationship with the vendors as they don't feel trusted. Board members can avoid liability for their decisions if they trust experts. According to the "business judgement rule", a Board is not liable if they follow professional advice and it turns out to be bad advice.

4. **Check your Expectations.** Over the years, we have observed that one of the leading causes of frustration of many Board members is having expectations that are unrealistic. This affects two primary areas of HOA Board involvement: *timing and cost*. Many of us think that the process of obtaining bids, or

completing work should be much faster than it usually is, and also that the cost should be lower. When those things don't happen, as expected, there is inevitable disappointment. It may be a good practice to assume nothing, until there is better information to back up your expectations.

5. **Celebrate Accomplishments.** There is always something to celebrate, and good news helps to build community, whether it is something as simple as all the owners paying their assessments this year, or the completion of a project. This is a great way to recognize the work of the Board and it doesn't ever hurt to call attention to your work, because likely no one else will. Celebrating achievements and good news goes a long way toward owners appreciating the work that you are doing as a volunteer.

Thank you, Thank you, and **Thank You!** to the many thousands who faithfully serve their communities. May you find the "joy" or "more joy" in serving your community this year. ❖

Is Your Association Manager Certified?

Certification of Managers: What is it and is it important?

Common-Interest-Developments (CID) have a wide range of choices when it comes to deciding for hiring a management company. Management companies range from national corporations to sole proprietors working out of a home office.

The differences between management companies are significant and the comparison of companies can be daunting. However, the state of California has provided one excellent means of comparing managers that every Board should utilize in seeking to hire or replace a manager and management company.

In 2003, the legislature passed legislation, which became law in the Business and Professions Code in Section 11502. The section specified how someone could be called a "certified common interest development manager". Strangely, while this code section defined what is required of someone who is called a *certified common*

interest development manager, the law does not require those who function in this capacity to actually **be** certified.

Since the inception of the law, and annually thereafter, a person who either provides or contemplates, providing the services of a *common interest development manager* to an association shall disclose to the board of directors of the association the following information:

(a) Whether or not the common interest development manager has met the requirements of Section 11502 so he or she may be called a *certified common interest development manager*.

(b) The name, address, and telephone number of the professional association that certified the common interest development manager, the date the manager was certified, and the status of the certification, and (c) The location of his or her primary office.

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continued on page 3.

*"Is Your Association Manager Certified?":
continued from page 2.*

The law requires managers to pass an examination that would test knowledge, skills, and aptitude as outlined in Section 11502. The law further requires managers to complete 30 hours of course work initially. The manager must re-certify every three years, completing another 30 hours of coursework in a number of areas broadly related to common-interest-development management, including a course in ethics. In addition, *letters of reference* are required and at least six months of experience are required prior to becoming a *certified manager*.

While there is plenty of great criteria for Boards to review in making the best decision for the next management company, the issue of certification of a manager is an easy one. As a volunteer board member your inclination should be to work as efficiently as possible. Making the best long-term decisions about vendors is how board members reduce their labor as volunteers, (remember the "hourly rate" you are earning as a Board member). It is so important that you make good decisions in hiring vendors.

For most people their home represents one of their most valuable assets, and for that reason it would make sense to work with a manager who is certified. Working with a certified manager affords the best protection for associations. Knowledgeable and certified managers help steer their associations through the maze of regulatory compliance thereby reducing potential liability and making it easier for volunteer directors to meet their fiduciary duties.

A CID manager who makes the investment of time and money to become certified is clearly committed to this industry and has plans to remain in this industry for an extended period. A *certified* association manager separates those who are committed to the industry from those who simply applied for a job and were hired to work at a management company.

The position of association manager requires general knowledge as well as a variety of skills. One of the great challenges for HOA managers is burnout. Certification of a manager not only

means that they are committed to the industry, but they are also committed to improving their work by ongoing educational opportunities. Managers who are in this industry for the long term are the kind of managers that you want to have working for you.



In summary, here is why it is advantageous to work with a certified manager:

1. **Ethics** - A HOA Board should be concerned that their management company/manager has integrity and operates honestly. Both the Community Associations Institute (CAI) and the California Association of Community Managers (CACM) have Codes of Ethics and Standards of Practice. Only Certified managers are bound by these codes. Board members who work with a manager who is not certified have no recourse to deal with an issue, other than legal action.
2. **Conflicts of Interest:** Both managers and Board members can have conflicts of interest. A 2018 law requires management companies to disclose relationships with affiliated companies that may provide services to your association, where the manager, or management company have an ownership interest. As a board member, you should know when the manager benefits in other ways.
3. **Knowledgeable** - The CID (aka HOA) industry is continually impacted by new laws every year. As a volunteer Board member, you should not have to keep up on law changes. You should expect that your manager is doing this for you, and your manager or Management Company can provide you with the updates as they occur.

In closing, consider the value of your investment and the value of your time. When looking to hire a manager you must make the strongest decision you can make, and that should be for a Certified Common Interest Development manager.

**MANAGER CERTIFICATION:
The Beven & Brock Annual
Disclosure**

*"Is Your Association Manager Certified?":
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Importance Of Regular Tree Maintenance

By Jocelle Maliwanag, MBA, with American Heritage Landscape

The recent windstorm in Los Angeles County where many trees were lost is a vivid reminder of the importance of making sure that we take care of our trees. Arbor care is as much art as science. From planning and planting, to maintaining and protecting trees and property structures, it's a huge category that requires special expertise. Regular tree maintenance is vital in all communities to mitigate risk from falling branches and broken limbs. Structural pruning can also improve the aesthetics of the trees and buildings surrounding them. It is essential to have a full-time certified arborist on standby and a team of qualified horticultural experts. It is important to have programs for mature trees to prevent problems with landscaping, plumbing, walkways and structures.

Communities with trees should work with a Tree Arborist to design a tree care program that fits the property's needs and budget. The *maintenance tree plan* should include a plan to tackle the following:

last, is pruning for *safety reasons*. Trees can become a fire hazard or hanging limbs can cause extensive damage.

- General care- including fertilization and pruning
- Managing soil- including testing, adjusting pH, improving structure and fertilizing
- Performing tree health assessments
- Controlling insects and pests
- Preventing diseases
- Diagnosing and treating diseases
- Evaluating and mitigating tree hazards, including branch and root problems
- Protecting trees when soil and grading will impact them
- Relocating appropriate species or designing around them
- Installing cables to provide additional support
- Bracing trees
- Removing trees, including invasive species (such as "bark

- beetle")
- Grinding stumps
- Replacing trees
- Educating property owners about their trees

Tree maintenance is vital in sustaining the health of our ecosystem. Properly maintaining trees will ensure health and sustainability for years to come. Not only do trees impact your community, they also impact our global environment. Trees fight climate change, save on energy consumption, and help with conservation. Therefore, properly pruning trees will remove dead and dying stubs, which will allow for new growth and protect from falling branches. In addition, properly pruned trees deter pest and animal infestation.



There are three main reasons trees are trimmed. One is to trim for health reasons such as dying trees or infestation from pests and animals. The second reason is to develop sturdier structures and stronger limbs. The

last, is pruning for *safety reasons*. Trees can become a fire hazard or hanging limbs can cause extensive damage.

Regardless of the reason, there are many benefits to maintaining and pruning trees regularly. It can improve pedestrian flow and ensure clear view of signs. It helps reduce the occurrence of diseases and effectively addresses some of the safety risks with damaged branches. In addition, it reduces the presence of excess shade which can impede on the potential growth of plants beneath the trees such as grass.

In closing, trees are known to enhance property values, and they are worth the investment of proper and regular care and maintenance.

Jocelle Maliwanag, MBA can be reached at jmaliwanag@americanheritagelandscape.com or by phone at (818) 882-8031. ❖

In this issue, we are featuring advice from two companies who are addressing the "Balcony" inspection requirements (SB326). In addition, we are providing a resource list of 18 companies who are providing this service as well. To access this resource, go to: <https://www.bevenandbrock.com/board-member/> and click on #20.

Advice from Randy Beery at the Bergeman Group, a Construction Management company and active in balcony inspections;

What is the current status in the Balcony inspection market?

We have had many associations requesting proposals. There is a lot of "shopping" of bids right now. Whether it is from sticker shock or from associations hoping prices will go down, a large number have not been committing to performing the inspections.

HOAs are getting much conflicting information on what needs to be inspected, how many elements of the building, and how they need to be inspected. Even lawyers cannot agree on many of these issues.

What do Boards need to know that isn't obvious?

The longer an association waits to decide to start the process, the longer it will take to get the inspection done. Right now the Bergeman Group is 6-8 weeks out to perform the initial inspections required to provide the data to the engineer who will do the calculations of the "statistically significant" sample set. This information is required to accurately write a competitive proposal to perform the inspections and order vents. With the rapidly changing prices in construction, we will not be able to hold our pricing past 120 days.

The ambiguity in the wording of SB326 makes it unclear to HOAs on how many decks need to be inspected.

A "statistically significant sample" means a sufficient number of units inspected to provide 95 percent confidence that the results from the sample are reflective of the whole, with a margin of error of no greater than plus or minus 5 percent.

Most of our competitors quotes include inspection of 100% of the decks in lieu of calculating a "statistically significant sample". With smaller associations it may very well include 100% of the decks. But with larger associations, mathematically calculating the sampling size will save an HOA tens

of thousands of dollars.

What if an association knows that they have deck or railing issues already?

If an association **knows** they need deck repairs or handrails replaced, we recommend talking to a construction manager and incorporating the SB326 inspection into the repair project instead of



the other way around. Most deck repairs will require a structural engineer for proper building permits. We suggest including the engineer of record for the project to inspect the decks as part of his contract.

Are the requirements different for newer Associations?

All HOAs that had **building permits issued** PRIOR to January 1, 2020, need to comply with SB 326 even if the Certificate Of Occupancy(COO) is months or years later. If the permit was issued after 1/1/2020, an inspection is required within six years after the certificate of occupancy is issued.

Also, if an association is comprised of all single family or duplex units (two dwelling units in a single building) or in a Planned Development association; no inspection is required. (Per Section 5551.1).

If an association's COO was issued less than ten years ago and they are experiencing waterproofing, railing, or structural failures on ANY of their elevated decks, walkways, or stairs they may have a defect claim against the builder. SB326 inspection could possibly be included in any

inspections required to seek a claim against the builder. IF an HOA falls in to the ten year statute of limitations, let the inspector know you want to be notified, **immediately**, if damage is discovered DURING an SB326 inspection. And then take a lot of photos and consult a Construction Defect (CD) attorney.

Only an elevated element that poses an immediate threat to the safety of occupants need to be reported to the local enforcement agency within 15 days. Occupant access to a reported element is prohibited until inspected and approved by the local building department.

There are some balconies that do not need to be inspected, such as recessed decks and "juliet decks". A recessed deck is one that is built into the structure of the building, and a "juliet deck" is a very small and narrow deck. (See photo)

For more information: (619) 639-9610, Ext. 310; Cell: (619) 599-6216 or randy@bergemangroup.com

Advice from Carl Brown at AWS Consultants:

Our company has sent out over 100 proposals based on requests from last year. We are now beginning to see them come back approved.

We are finding that there is still much confusion out there such as:

1. Which elements qualify for inspection? Wood framing for elevated walkways, stairwells and decks that are over 6 ft above ground, as well as railings of all kinds.
2. What vendors are qualified to perform inspections and sign off for compliance? A Structural Engineer or "Forensic" Architect only?
3. Can a General Contractor provide SB326 inspections with a Civil Engineer signing off? No.
4. Are there any balconies that are excluded? Yes, if fully supported on all four sides by building walls that go down to the foundation.

"Expert Advice Regarding Balcony Inspections": continued on page 6.



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DOES MY BUILDING FALL UNDER THIS ORDINANCE?

- Does your building have 3 or more units?
- Does your building have wood-framed exterior elevated elements?
- Are there walking surfaces and/or balconies and decks higher than 6 feet above ground?

PROJECT PHASES!

- Get In Touch with an **Engineer or Architect**
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- Destructive Testing
- Engineer's Official Report
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"Expert Advice Regarding Balcony Inspections": continued from page 5.

- Is destructive testing required? The law states that the least invasive methods should be used. Don't do any destructive testing unless there is evidence of structural damage.
- How is the process organized for best efficiency and cost?
 - A no-cost site visit is necessary to verify access and the number and type of elements to inspect. We consider this as *Stage One*.
 - The proposal should spell out *stage one* (visual) only. Inspection results will determine the need for further testing of some kind, to be determined. Stage one should be done immediately, since repairs can take time and funding issues may be involved.
 - Stage two* should be conducted only at locations where issues are apparent or suspected, again minimum, such as the use of a borescope. A borescope is used for visual inspection work where the target area is inaccessible by other means, or where accessibility may

require destructive activities.

- Stage three* will determine actions recommended by the engineer, including the creation of specs for major repairs or code compliance.
 - Stage four* should consist of a competitive bid process to qualified contractors with project specific repair specs and inspections.
 - A project manager can organize stages and operations, then verify reports are completed and the process is correct and completed.
- AWS has located a funding source for our clients who require extensive repairs. Funding is always a primary area of concern for HOA's.
- Our advice is to check prospective vendors carefully, not just their price. Longevity matters and paying a fair price for excellent service is a good bargain for common interest developments.
- Carl Brown, Senior Vice President. Website: WWW.AWSCONSULTANTS.COM
Direct: (949)678-5100 ❖

"Is Your Association Manager Certified?": continued from page 3.

As a matter of disclosure for 2022, **all** of the Beven & Brock association managers and the principals of the firm are Certified common interest development managers. This means that each of the following have met the requirements of the Business and Professions code, section 11502.

The following managers certifications are current and are certified with the CCAM designation by CACM, which is located at 23461 So. Pointe Dr., Suite 200, Laguna Hills, CA 92653. The phone number is (949) 916-2226.

- C. Finley Beven, since 1994, Emeritus
- Vianna Boettcher, since 2006
- Roman Esparza, since 2009
- Juanita Flores, since 2004
- Laura Hoot, since 2003
- Lori Lacher, since 2003
- Sue Threadgill, since 2003.
- The following managers are certified with the Community Associations Institute, located at 6402 Arlington Blvd., Suite 500, Falls Church, VA 22042; Phone: (703) 970-9220:
- David Brock, PCAM designation,

since 1990

- Laura Aguilar, CMCA, since 2015 and AMS (Association Management Specialist) as of 2016
- ** Paul Cannings, CMCA since 2008 and CCAM since 2003.
- Marlene Gamboa, CMCA since 2017
- Kim Bloomer, CMCA since 2021
- Fang Zhu, CMCA since 2017
- Elizabeth Threadgill, since 2021
- ** Certified in both the national and the state organizations.

We congratulate Marilyn Howald and Tricia Ford on their recent retirements. We welcome Marlene Gamboa to Beven & Brock, and also congratulate Kim Bloomer and Elizabeth Threadgill for their recent certification.

The law also requires that the location of the manager's primary office be disclosed which is 99 S. Lake, Suite 100, Pasadena, CA. 91101.

If your Association is managed by another firm and you have not received the annual disclosure, you may want to ask for it. ❖

more loans and keep housing relatively affordable.

Approximately 70% of all condo loans in the nation are Fannie Mae or Freddie Mac backed, according to Dawn Bauman, of the Community Associations Institute (CAI). She also states that sixty to seventy percent of all condo complexes are more than 30 years old. Fannie Mae has a list of nearly 100 "unavailable" condo projects in California due to their need for extensive and overdue repairs.

Fannie Mae has provided guidelines for lenders that they must apply if they are going to make loans in common interest developments. The guidelines involve three general areas: 1) structural issues, 2) amount of reserve funding, and 3) special assessments.

First, in addressing structural issues, the lenders are now required to ask more questions pertaining to this. Specifically, they are looking to discover if the project has deficiencies, defects, substantial damage, or deferred maintenance that is severe enough to affect the safety, soundness, structural integrity, or habitability of the properties. Additionally, they will ask about whether the mechanical elements of the building, such as the electrical system, plumbing systems or roof is impeded. The required lender forms that are sent to management or the Board may ask whether there have been any notices from the local government, and whether there have been any engineering or structural inspections.

Secondly, Fannie Mae has indicated projects that budget less than 10% of the HOA's assessment income may be at increased risk for significant deferred maintenance and special assessments. Consequently, annual funding of reserves at 10% of the annual assessment income appears to be the minimum acceptable threshold. This requirement exists whether the association is already 100% funded or if the reserve components are relatively insignificant, such as what may exist in a planned development. It will be interesting to see how this works out in practice. As is always

recommended, it is advisable to fund reserves according to the recommendations of the reserve study. However, if the reserve study recommends a funding number that is less than 10% of the budget, it may be necessary to at least fund 10% in your budget to meet lender requirements. In the past, it has been necessary to revise a budget mid-year to meet the 10% funding level.

Finally, the issue of special assessments is also under scrutiny. The lender must document the reason for the special assessment, the total amount assessed, the repayment terms, and the impact on the borrower's ability to repay the loan. Additionally, the lender will be looking to see that there is no negative impact on the financial stability, viability, condition, and marketability of the project.

The lenders are also being advised to review the past six months of HOA meeting minutes and obtain information and obtain information about any maintenance or construction that may have significant safety, soundness, structural integrity, or habitability impacts. Also, projects that are engaged in construction defect or other material litigation are considered ineligible.

Boards and management companies should always be honest when responding to the lender questionnaire, however some of the questions are very difficult to answer. For instance, a question has been asked as to whether it is anticipated that the project will, in the future, be cited for violations? The response to this requires the respondent to be clairvoyant. For other questions, if the responses are unknown, not applicable, or undetermined, it may mean that that seller (owner) will have difficulty finding a buyer. Some CID lawyers are advising associations to not complete these questions. It can be risky to answer the questions and risky to avoid answering the questions. An association should consult their legal counsel in this regard.

Finally, if a project is deemed "ineligible" there are other financing options. However, the rate will be higher to as much as one half to one point, with a larger down

payment possibly required. This issue may influence property values as condominiums may be more difficult to sell.

In closing, the good news is that for HOA's who properly maintain the common areas, address maintenance issues promptly, fund reserves by at least 10%, and plan to avoid special assessments will achieve the best loan terms. As a result, market values will be unaffected by these lending changes and the sales comparables will be the best for all owners. As we continue to learn more about these requirements and hopefully improvements in this situation, we will keep you updated. ❖

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BEVEN & BROCK

NEWS & VIEWS

for Homeowner Associations

HOA BOARD MEMBER EDUCATION

Education for volunteer HOA board members is essential for success as board members. Due to the ever-increasing complex and changing nature of the laws and regulations that impact common-interest-developments staying on top of these changes greatly increases a board's member ability to succeed in their role, and operate in confidence

There are several ways for board members to be educated, and Beven & Brock offers two types of training for board members.

A RESOURCE AVAILABLE FOR HOA BOARDS!

Beven & Brock is pleased to announce the availability of a new resource for Homeowner Association Boards to find information on topics of interest as needed on demand. Over 135 articles have been taken from prior newsletters and gathered in one place, located at <http://www.bevenandbrock.com/topical-article-library/>. The topics are organized into categories, such as Legal, Meetings, Board, Reserves, Insurance, Community, Elections, Maintenance, Management and other subjects.

This area of the website requires a simple one-time registration, and once that is completed, you can freely access a number of articles on a variety of topics that have appeared in HOA News and Views over the past eight years. This resource will help HOA Board members to become educated in an easy and accessible way. The goal is to help boards make well-informed decisions in a variety of challenges that they may encounter.



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